THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

–

WRIT PETITION No.729 OF 2007

Dated 2nd February 2007

Between:

Smt.C.V.S.N.K.Kavitha

...Petitioner

and

A.P.Housing Board, rep.by Executive Engineer(Hg), A.P.Housing Board, Visakhapatnam & others.

...Respondents

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WRIT PETITION No.729 OF 2007

O R D E R:

The petitioner is an allottee and purchaser of flat No.302, which is in the ground floor of Block No.4 of Pedagantyada, Visakhapatnam. She constructed compound wall appurtenant to her flat, on the ground that not only the privacy of the inmates, but also their safety is at stake. On a complaint said to have been made by the 3rd respondent, respondents 1 and 2 initiated steps for demolition of the wall. Petitioner seeks a writ of mandamus to declare the action of the respondents 1 and 2, in trying to demolish the compound wall, as illegal and arbitrary.

The writ petition was admitted on 11.1.2007, and an order of *status quo* was passed. Respondents 1 and 2

have since entered appearance.

Heard the learned counsel for the petitioner and learned Standing Counsel for the respondents.

The nature and extent of rights of the flat owners, particularly in the context of the use of the land, on which the flats are constructed, is provided for under regulations, issued in G.O.Ms.No.48, Housing (HB) Department, dated 20.4.1992, framed in exercise of powers under Section 71 of A.P. Housing Board Act 1956. Clause (4) is clear to the effect that the appurtenant land shall vest jointly in all the flat owners, wherever multi-storeyed buildings are constructed by the Housing Board. The owners of the flat, particularly those of the ground floor, are prohibited from enclosing any particular area for their flat.
Clause (5) enables the flat owners, to construct compound wall for protection and privacy, for the benefit of all owners, but not individually. Clauses (13) and (14) also have bearing on this aspect.

The purport of the clauses, contained in the G.O., is that the construction of compound wall is permissible, only for the collective benefit, and individual flat owners cannot undertake such an exercise. The Housing Board is also endowed with the duty, to protect the property as well as the rights of the flat owners.

It is urged on behalf of the petitioner that animals of different kinds are entering the flat, on account of

there not being any compound wall, or obstruction, and though she made efforts to convince the other flat owners to construct a compound wall all around, they are not forth coming. She further complains that some of the flat owners have already made construction, enclosing their own appurtenant lands. The respondents 1 and 2 cannot play the role of spectator on the one hand, when it comes to the question of protecting the property and rights of the inmates, and an agency exclusively to demolish the existing constructions, on the other hand.

Having regard to the facts and circumstances of the case, the writ petition is disposed of, directing that the respondents 1 and 2 shall take immediate and necessary steps to get a compound wall constructed for the block, enclosing the area, on which the cluster of flats is existing, in the manner provided for under G.O.Ms.No.48, dated 20.4.1992. Till such a compound wall is constructed, they shall not demolish the wall constructed by the petitioner. As and when the respondents construct a compound wall, the petitioner is under obligation to clear the construction made by her. There shall be no order as to costs.

2nd February 2007

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